WILLIAM YURIOFF, GUST K. WAHL,
CHARLIE CHOCKNOK, OLIA OYALUK

IBLA 77-26, 77-250,
77-478, IBLA 78-43 Decided September 11, 1979

Appeals from separate decisions of the Alaska State Office, Bureau of Land Management, rejecting in part applications for Native allotments AA 7329, AA 6093, A 054444, AA 6412.

Set aside and remanded.

1. Alaska: Native Allotments

> The Department of the Interior is only authorized to approve Native allotment applications which were pending before the Department on Dec. 18, 1971. If an applicant provides satisfactory evidence that he had delivered his application before that time to the agency office of the Bureau of Indian Affairs which held it past the time when it should have been filed with the Bureau of Land Management, the application may be adjudicated as having been timely filed.

APPEARANCES: Matthew D. Jamin, Esq., Alaska Legal Services Corporation, Kodiak, Alaska, for appellant Yurioff; Frederick Torrisi, Esq., Alaska Legal Services Corporation, Dillingham, Alaska, for appellants Wahl and Oyaluk; James G. Robinson, Esq., Alaska Legal Services Corporation, Dillingham, Alaska, for appellant Chocknok.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

These are consolidated appeals from decisions of the Alaska State Office, Bureau of Land Management (BLM), which rejected in part appellants' applications for Native allotments, because applications for certain parcels had not been filed prior to December 18, 1971, when

the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1976), repealed the Alaska Native Allotment Act of 1906, ch. 2469, 34 Stat. 197, amended by the Act of August 2, 1956, 70 Stat. 954. Appellants' applications for other parcels were not affected by the decisions appealed from.

[1] By section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1976), the Department of the Interior is only authorized to approve Native Allotment applications which were pending before the Department on December 18, 1971, the date of that Act.

In a memorandum to the Director, BLM, dated October 18, 1973, Assistant Secretary Horton stated:

> This phrase [pending before the Department on December 18, 1971] is interpreted as meaning that an application for a Native allotment must have been on file in any bureau, division, or agency of the Department of the Interior on or before December 18, 1971. The Department has no authority to consider any application not filed with any bureau, division, or agency of the Department of the Interior on or before said date. Evidence of pendency before the Department of the Interior on or before December 18, 1971, shall be satisfied by any bureau, agency or division time stamp, the affidavit of any bureau, division or agency officer that he received said application on or before December 18, 1971, and may also include an affidavit executed by the area director of BIA stating that all applications transferred to BLM from BIA were filed with BIA on or before December 18, 1971. [Emphasis in original.]

Each appellant has made offers of proof to support his or her allegations that an application was filed with the Bureau of Indian Affairs prior to December 18, 1971. For example, each applicant has submitted his or her own affidavit as well as an affidavit or statement from an official of the Bureau of Indian Affairs. It is therefore appropriate to remand each case for readjudication under the above guidelines.

William Yurioff had filed an application dated May 18, 1971, for two parcels of land which comprised 113 acres. The Bureau of Indian Affairs (BIA) had filed this application on Yurioff's behalf on March 23, 1972. On May 27, 1975, BIA filed a Native allotment application and evidence of occupancy for a third parcel which included 165 acres. This application was dated March 11, 1971. The State office has not yet adjudicated appellant's application for parcels A and B, but by decision dated September 23, 1976, it rejected appellant's application for the third parcel, treating it as a new

application filed after the deadline. Appellant's evidence that his application for parcel C had been filed before the deadline consists of his own affidavit and a memorandum (not an affidavit) dated May 22, 1975, from Roy Peratrovich, Superintendent, Anchorage Agency, Bureau of Indian Affairs, stating that appellant's application was filed with the BIA on March 25, 1971. We note that the combined acreage of the three parcels vastly exceeds the 160-acre maximum imposed by the Alaska Native Allotment Act. Mr. Yurioff should be given an opportunity to amend his application prior to further adjudication so that the combined acreage of the parcels does not exceed the statutory maximum. It is a general principle of administrative law that where an application on its face fails to meet regulatory requirements, it is subject to summary rejection without a hearing, notwithstanding any statutory or due process requirement for a hearing which would otherwise obtain. See Weinberger v. Hynson, Wescott & Dunning, Inc., 412 U.S. 609 (1973).

Gust K. Wahl had filed an application for one parcel on November 19, 1970. On April 24, 1972, BIA filed an application for a second parcel. Each parcel included approximately 80 acres. On November 1, 1972, BIA sent a memorandum reducing the acreage for parcel B and including parcel C, although no application for parcel C had been sent. On December 9, 1974, BIA sent another memorandum with [Word Illegible] Native allotment application forms and evidence of occupancy forms enclosed. However, these forms were not complete, in that one did not have a land description, a second did not have appellant's signature, and the third was blank except for appellant's signature. On September 10, 1976, an application for parcel C was sent to BLM. However, this application was signed on August 16, 1976, and certified by BIA on September 10, 1976. The application was thus invalid on its face. For this reason, the Alaska State Office, BLM, rejected appellant's application for parcel C by decision dated February 15, 1977. The decision did not affect appellant's application for the other parcels. In support of his assertion that an application for parcel C had been filed with BIA prior to the deadline, appellant has submitted an affidavit from a realty specialist with the BIA which states that applications for three parcels had been filed prior to the deadline. If appellant had timely filed an application with BIA which was lost, he should be given an opportunity to reconstruct his original application.

Charlie Chocknok had received a patent for almost 16 acres of land on August 10, 1973, pursuant to an application of April 5, 1961. BIA filed amended applications for 2 parcels on February 11, 1977, and indicated that a correct description for another parcel was being sought from appellant. By decision dated July 12, 1977, BLM rejected the applications as being tardy and incomplete. Appellant contends that he submitted an application for three parcels dated

November 10, 1970. Appellant has offered an affidavit from the realty officer of BIA stating that his application was on file with BIA before December 18, 1971. A letter dated December 8, 1971, from BIA indicates that appellant had filed an application with BIA which was being processed at that time. (The application for parcel A was with BLM at that time.)

The State Office's decision noted that Chocknok's application was about 10 acres in excess of the 160-acre limit. However, the patent for parcel A had not been issued at the time the application for the other parcels was allegedly filed with BIA. It was later determined that parcel A included 10 additional acres beyond that designated in the original application. Appellant should be permitted to reduce his application so that the acreage does not exceed the maximum permitted.

Olia Oyaluk had filed an application for a parcel of land designated as tract A which was determined to be a valid claim. The BIA filed this application on appellant's behalf on June 24, 1971. On January 5, 1976, BIA sought to amend the application to include a tract B. By decision dated September 21, 1977, the Alaska State Office, BLM, rejected this amendment, holding that it was an application for new land which could not be made after December 18, 1971. An affidavit by the Acting Superintendent, Anchorage Agency, BIA, states that an application for both parcels was filed with BIA on November 11, 1970.

Because each of these appellants has applied for more than one parcel, a general statement that an appellant had an application on file with BIA is not sufficient to establish that the particular application under review had been timely filed. Apparently, BIA had assisted the applicants in preparing their land descriptions to meet regulatory requirements after appellants had provided BIA with less formal descriptions of the land. Where the land description was changed after December 18, 1971, the evidence submitted by the applicants should establish that the change was made for correction only and not for the purpose of applying for new land. See Annie Soplu, 22 IBLA 38 (1975). If BLM is not satisfied with the information provided, it may make a more specific inquiry with applicants or BIA personnel, reminding them of their obligations under 18 U.S.C. § 1001 (1976), or it may refer the matter for investigation.

We are not ruling at this time on the adequacy of appellants' asserted use and occupancy as required by the Native Allotment Act. If BLM or any party adverse to the applicant believe that the use and

occupancy is inadequate, resolution of that legal issue will best be made after a hearing where all the facts have been ascertained. The facts should establish the type and extent of use, whether others may have used and occupied the land, and all other matters which would show the factual basis for ascertaining whether compliance with the conditions for granting a Native allotment have been satisfied. BLM should be certain to afford notice of the initiation of contest proceedings to any person or entity which may possibly have a conflicting interest in the land. If BLM chooses to grant the allotment without Government contest, it should notify conflicting applicants of such intent so as not to deprive them of their right to bring a private contest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, decisions appealed from are set aside and the cases remanded for further action consistent with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge